HOUSE FINANCE, WAYS AND MEANS COMMITTEE AMENDMENT #1

AMENDMENT NO._____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
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Signature of Sponsor

AMEND Senate Bill No. 351 House Bill No. 1020*

by deleting Section 3 in its entirety, renumbering Section 4 as Section 5, and substituting the following:

Section 3. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new subsection (a):

(a) Notwithstanding the provisions of the state health plan or any regulation of the commission, the provisions of this section establish the criteria for issuance of certificates of need for new nursing home beds regardless of site (including conversion of any beds to licensed nursing home beds). The commission is authorized to grant a certificate of need (CON) only if the applicant meets all of the requirements of this section.

(b) The first criterion which must be met is the need for the project.

(1) The need for nursing home beds shall be determined by applying the following population based statistical methodology:

County bed need = .0005 x population of the county sixty-five (65) years of age and under; plus,

.0120 x population age 65 - 74; plus,

.0600 x population age 75 - 84; plus,

.1500 x population age 85+.

County population statistics shall be based upon official statistics provided by the Department of Health.

(2) The need for nursing home beds shall be projected two (2) years into the future from the current year, as calculated by the Department of Health, Division of Information Resources.

(3) The actual bed need shall be derived by subtracting the projected bed need from a bed total comprised of the number of nursing home beds licensed in the county plus certificate of need approved, but yet unlicensed beds, plus any beds to be added through the ten (10) bed/ten percent (10%) provision as notified to the commission prior to submission of the certificate of need application under consideration. Such notification shall include evidence that the facility intending to utilize the ten (10) bed/ten percent (10%) provision has applied for licensure of the beds.

(c) The second criterion which must be met is economic feasibility.

(1) The application must show and the commission must find that the project will meet or exceed the following parameters:

(i) a debt service coverage ratio greater than or equal to 1.25 by the end of the second year of projection. Debt service coverage ratio is net income before depreciation and interest expense divided by the annual debt service.

(ii) a current ratio greater than or equal to 1.25 by the end of the second year of projections. Current ratio is current assets divided by current liabilities.

(iii) day's cash on hand greater than or equal to fifteen (15) days at the end of each year of projection. Day's cash on hand is cash plus equivalents divided by net operating expenses per day minus depreciation per day.

(iv) long term debt as a percent of total capital less than or equal to ninety percent (90%). Long term debt as a percent of total capital is long term debt divided by long term debt plus shareholders equity or fund balance.

(2) The applicant must show and the commission must evaluate the project with reference to:

(i) whether sufficient financial resources are available to implement and operate the project including levels of patient charges and proof of potential capital financing.

(ii) the long range amortization of the project plus any cost associated with the original building if the proposed project is an addition or conversion of current space.

(iii) a comparison of the cost of similar projects, including any construction costs, during the preceding year.

(iv) projection of total costs over expected life of facility.

(d) When considering competing applications (two(2) or more applications for nursing home beds in the same county) the Health Facilities Commission shall consider the following criteria in addition to need and economic feasibility:

(1) Any unique qualities or characteristics the application exhibits that distinguishes it from other nursing homes, in the form of clientele served or services offered.

(2) The extent to which each project proposes to meet any unmet needs of the area's population.

(3) The comparative costs of the projects, with a specific emphasis on the per diem costs and charges to Medicare, Medicaid, as well as impact on insurance payments and private rate charges. In competing applications the focus shall be more on comparing the cost to the patient or payment source than a comparison of per bed or per square foot costs.

(e) The commission shall not approve the settlement of an appeal of the denial or issuance of a CON if such settlement approves a project which does not meet the requirements of this section.

(f)(1) Applications filed on or before April 1, 1996, shall be considered by the commission in accordance with law in effect prior to the enactment of this act. The requirements of subsection (b) through (e) shall not apply to applications for

certificate of need filed after April 1, 1996, for new nursing home beds (including conversion of hospital beds) which will be certified for participation in the Medicare program as skilled nursing facility (SNF) beds. Until June 30, 1997, such applications will be reviewed for a determination of need in accordance with this subsection. No more than one hundred twenty-five (125) Medicare SNF beds shall be authorized by certificates of need issued pursuant to this subsection.

(2) Applications for Medicare SNF beds under this subsection shall be reviewed by the Department of Health as required in paragraph (3). If the commissioner determines that inadequate resources exist within the department to conduct such a review, the review shall be conducted by a professional consultant, either an individual or business entity, having experience in health planning and analysis who shall be selected and retained by the commissioner of the Department of Health in accordance with prevailing state procedures. The consultant shall not be an employee of the state or have been such within the past year and shall not have represented an applicant before the commission during the previous year. The contract with the consultant shall require that the report on the application or competing applications be completed in a timely manner but in no case later than the sixty (60) days allotted for review.

(3) The review by the department or consultant shall be of sufficient scope and depth to formulate an expert opinion concerning the need for the project and must include, at a minimum, the following:

(i) An analysis to corroborate the applicant's identification of the principal areas of patient origination (catchment area) or to determine same.

(ii) Field interviews with the administrator or his or her designee for each facility in the catchment area which provides skilled nursing services whether certified for Medicaid, Medicare or both.

(iii) A determination of the level of services provided by each such facility, the availability of such services, and the ability of other facilities to provide the types and levels of services proposed by the applicant.

(iv) The needs of the relevant populations for such services.

(v) An analysis of the application and any reasonable alternatives which would include a comparison of levels and types of services, rates or charges to payers and any significant difference in measurable patient outcomes between alternatives.

(vi) A determination of physician and staff availability to ensure adequate physician coverage and staffing for the new beds.

(vii) Such other analyses as the department or consultant shall deem appropriate.

(4) The report by the Department of Health or consultant shall make the determination of need for the project which shall be prima facie evidence of the need or lack thereof and deemed presumptively correct by the commission in its consideration of the criteria for issuance of a certificate of need pursuant to this section.

(5) The commission shall establish without rule-making additional fees for applications for SNF beds which shall be used by the commissioner of the Department of Health as necessary to pay for the consultant services set forth in this subsection.

(g) During the time this section is in effect its provisions shall apply to all changes in number of licensed nursing home beds. The ten (10) bed/ten percent (10%) provision of Section 68-11-106(a)(3)(A) shall not apply during such time. This section, 68-11-121, shall automatically terminate, unless renewed, on July 1, 1997.

Section 4. Tennessee Code Annotated, Title 68, Chapter 11, Section 108, is amended by adding a new subsection as follows:

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(g) In awarding certificates of need for rehabilitation hospitals the commission shall not discriminate among licensed providers on the basis of their licenses.